IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Chamber Summons No.939 of 2005
in
Suit No. 700 of 1972

Surinder Singh Kohli ..Plaintiff

vs.

1. The Municipal Corporation
of Greater Bombay & Ors. ..Defendants

Mr.Shailesh Shah i/b S.Satpute and Co. for plaintiff/applicant
Mr.U.J.Makhija i/b M/s S.H.Ujjainwala & Co. for defendant nos. 1 to 4
Mr.O.B.Molonkar for defendant no.5

CORAM: A.M.KHANWILKAR J.
29th August, 2005.

P.C.

. Counsel for the applicant states that this chamber summons is pressed only against defendant nos. 1 to 5. In the circumstances, defendant nos. 6 to 9 are not required to be served at the risk of the applicant. Defendant nos.1 to 4 are represented by Mr.S.H.Ujjainwala and defendant no.5 is represented by Mr.Malonkar. Defendant nos. 1 to 5 who are the contesting parties, waive service of notice.

2. By this application, the plaintiff prays that defendant no.1 be directed to prove the documents annexed to their compilation of documents before this Court before the plaintiff begins his cross

examination. It is further prayed that the period of six weeks granted to the Commissioner for submitting the report be extended by six weeks or such other appropriate time. After hearing the counsel for the parties, learned counsel for the plaintiff fairly accepted that the affidavits in lieu of examination in chief of the concerned witnesses which are already taken on record though not specifically mentioned in order dated 10th June, 2005, formal order taking the same on record be passed today. In the circumstances, by consent of parties, the affidavits in lieu of the examination in chief of the concerned witnesses already filed are taken on record.

3. In addition even the documents filed along with the affidavit of documents on behalf of defendant nos. 1 to 4 are taken on record, by consent.

4. Counsel for the plaintiff, however, submits that the documents referred to at Sr.Nos. 2, 5 and 10 may not be taken on record as only the xerox copies of the said documents have been produced. In response to this objection, counsel for defendant nos.1 to 4 states that so far as documents at Sr.Nos. 5 and 10 are concerned, those

are part of the internal office record and originals thereof will be produced. As that assurance is given the objection on behalf of the plaintiff for exhibiting those documents is waived subject to compliance by defendant nos.1 to 4 of producing the originals thereof.

5. In so far as the document at Sr.No.4 is concerned, the same is postal acknowledgement showing warrant of attachment served on Surender Kohli by Registered A.D. The document which is produced is the original was received in the office of defendant nos. 1 to 4. The same is taken on record and exhibited subject to the factum of service being proved in evidence as is required in law.

6. In sofar as the document at Sr.No.2 i.e. warrant of attachment dated 11th October, 1971 bearing No.HAS/26/38 71-72 is concerned, it is rightly contended on behalf of defendant nos. 1 to 4 that the original thereof must have been duly served on the plaintiff or pasted on the premises. The defendants, therefore, can produce only the office copy of the said document as the original of the office copy must be in possession of the plaintiffs. Accordingly, even document at Sr.No.2 is to be marked as exhibit.

7. In other words, no objection regarding admissibility of the documents survive for consideration in view of the stand taken by the plaintiff as referred to above. In this background the application is disposed of leaving the question of law on the relevant issues open to be decided at the appropriate stage as and when occasion arises. The said documents be marked as Exhibits 1 to 13. The original documents will be made available at the time of recording of evidence on commission which is to commence at 5.30 p.m. Inspection of the said original documents will be given to the plaintiff and his Counsel. In the event the plaintiff desires to take adjournment even that request will be acceded to by the defendants.

8. By consent, time to conclude evidence on commission (cross examination) is extended by a period of four weeks from today.

9. Chamber Summons stands disposed of accordingly.